

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/008248

International filing date (day/month/year)
22.07.2004

Priority date (day/month/year)
25.07.2003

International Patent Classification (IPC) or both national classification and IPC
A46B3/20

Applicant
GLAXOSMITHLINE CONSUMER HEALTHCARE GMBH & CO..

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Cardan, C

Telephone No. +49 89 2399-8115



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**International application No.
PCT/EP2004/008248

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/008248

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

4. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-11
	No: Claims	12-21
Inventive step (IS)	Yes: Claims	
	No: Claims	1-21
Industrial applicability (IA)	Yes: Claims	1-21
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

1. Any of the documents cited in the search report can be considered as the most relevant prior art. Each of these documents discloses a toothbrush having a head and bristles which are embedded in a elastic deformable mass, i.e.: D1/claim 1, D2/p 5/l 18-21, D3/abstract or D4/p 4.
The subject-matter of claim 1 differs with respect to D1 to D4 in that the mass in which the bristles are embedded is a gel material. Hence, the subject-matter of claim 1 fulfills the requirements of Art. 33(2) PCT.
The replacement of a elastomer or a soft material or an elastically deformable material with a gel material cannot be seen as fulfilling the requirements of Art. 33(3) PCT.
2. Same applies to claim 8
3. Claim 12 is not allowable because it discloses a process in terms of technical features of a device (not a single step is disclosed therein).
4. Claim 13 which actually discloses the process and which should have been formulated as a independent claim, cannot be considered as fulfilling the requirements of Art. 33(2) PCT because even the method as such is not disclosed as such in any of the documents it appears to be the only way the brushes disclosed in those documents can be manufactured.
5. The dependent claims 2 to 7 do not add any further technical features, to the independent claim 1, which are not already disclosed in the prior art cited in the search report and that in combination with those of claim 1 could lead to an inventive claim.
6. The dependent claims 9 to 11 do not add any further technical features, to the independent claim 8, which are not already disclosed in the prior art cited in the search report and that in combination with those of claim 8 could lead to an inventive claim.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/008248
